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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,106	03/30/2000	Edward A. Hubbard	BAY3:006	7871

7590

08/14/2003

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EXAMINER

MAIS, MARK A ,

ART UNIT

PAPER NUMBER

2664

DATE MAILED: 08/14/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

21

Office Action Summary

Application No.

09/539,106

Applicant(s)

HUBBARD, EDWARD A.

Examiner

Mark A Mais

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6-8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed on March 30, 2001 does not fully comply with the requirements of 37 CFR 1.98 because: it is missing the relevant documents (thirteen (13) co-pending applications, patents A-1 through A-39, and documents C1 through C11). Since the submission appears to be *bona fide*, applicant is given **ONE (1) MONTH** from the date of this notice to supply the above mentioned omissions or corrections in the information disclosure statement. NO EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 CFR 1.136(a) OR (b). Failure to timely comply with this notice will result in the above mentioned information disclosure statement being placed in the application file with the noncomplying information **not** being considered. See 37 CFR 1.97(i).

Specification

2. Applicant is reminded, under certain circumstances an application for patent is entitled to the benefit of the filing date of a prior nonprovisional application or provisional application which has at least one common inventor. The conditions are specified in 35 U.S.C. 120 for the benefit claim of a prior nonprovisional application and 35 U.S.C. 119(e) for the priority claim of a prior provisional application. In order to claim priority, a cross-reference to co-pending applications is required in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 17 recites the limitation "the" in server system. There is insufficient antecedent basis for this limitation in the claim. Examiner recommends replacing "the" with "a".

Claim Rejections - 35 USC §102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1, 5, 7, 10, 12, 13, 14, 15, 17, 22, 23, 26, 27, 28 and 29 are rejected under 35 U.S.C. 102(a) as anticipated by Armentrout et al. (WO 01/14961 A2).

7. With regard to independent claim 1, Armentrout et al. discloses a method of testing a network site that is coupled to a network, comprising: providing a server system (Fig. 3, centralized task server, "CTS") coupling the server system (Fig. 3, CTS) to a network (Fig. 3, network 29), the network being configured to be coupled to distributed devices (Fig. 3, provider 30, 32, 34, 36); and utilizing the server system (Fig. 3, CTS) to distribute and schedule site testing workloads (balancing data processing loads based on the capabilities of the provider computer and the bandwidth that is available to provide elements and tasks to provider computers, *see* page 18, line 27 to page 19, line 2) for a plurality of the distributed devices (Fig. 3, provider 30, 32, 34, 36) to test content delivery (checking that the computations are correct, *see* page 19, lines 6-23) from a network site (Fig. 3, network 29).

8. With respect to independent claim 17, Armentrout et al. discloses a site testing distributed processing system comprising: a first system (Fig. 3, central task server “CTS”) coupled to a network (Fig. 3, network 29), the network being configured to be coupled to distributed devices (Fig. 3, provider 30, 32, 34, 36); and a workload database (Fig. 5, task scheduler 64 and client manager 68) coupled to the server system (Fig. 3, CTS) storing workloads (client requests sent to the client manager, *see* page 28, line 15; *see also* Fig. 5, client manager 68) for site testing, the first system (Fig. 3, CTS) scheduling the site testing workloads (client requests sent to the client manager, *see* page 28, line 15) for the distributed devices (Fig. 3, provider 30, 32, 34, 36) to test content delivery (checking that the computations are correct, *see* page 19, lines 6-23) for a network site (Fig. 3, network 29).

9. With respect to claim 5, Armentrout et al. discloses that the network may be the internet (page 3, lines 23-24).

10. With respect to claim 7, Armentrout et al. further comprises identifying a workload capability for a plurality of the distributed devices (*see* page 25, lines 19-21) and utilizing the identified workload capabilities to schedule site testing workloads for the distributed devices (*see* page 26, lines 11-17).

11. With respect to claim 10, Armentrout et al. discloses providing an incentive to couple the distributed devices to the server system through the network so that the distributed devices are capable of performing a portion of the site testing workload (page 39, lines 1-13).

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12. With respect to claim 12, it further comprises identifying workload capabilities for a plurality of the distributed network devices (*see* page 25, lines 19-21) and utilizing the identified workload capabilities to schedule and distribute site testing workloads for the distributed devices (*see* page 26, lines 11-17).

13. With respect to claim 14, Armentrout et al. further comprises transferring an agent (page 11, lines 6-13) to the distributed devices (i.e. software unit, page 11, line 7; *see also* CE 'pop up' window, page 13, line 12), an agent being capable of managing the site testing workload (page 11, lines 8-13).

14. With respect to claim 15, the agent (Fig. 3, CE 84; *see also*, page 11, lines 6-29) is further capable of providing workload related information to the user of the distributed device (can operate as a browser, *see* page 13, lines 3-24).

15. With regard to claim 22, the site comprises a service (Fig. 1, ecommerce 21) connected to the network.

16. With respect to claim 23, it further comprises a capabilities database (Fig. 5, database server 54) coupled to the first system storing workload capabilities for a plurality of distributed devices (*see* page 25, lines 19-21), the first system utilizing the workload capabilities to schedule site testing workloads for the distributed devices (*see* page 26, lines 11-17).

17. With respect to claim 24, Armentrout et al. further comprises an incentive database (Fig. 3, CTS, *see also* Fig. 5) coupled to the first system storing incentive values for a plurality of the distributed devices, the incentive values being provided to couple the distributed values to the server system through the network so that the distributed devices are capable of performing a portion of the site testing workload (page 39, lines 1-13).

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18. With respect to claim 26, it further comprises identifying workload capabilities for a plurality of the distributed devices (*see* page 25, lines 19-21) and utilizing the identified workload capabilities to schedule site testing workloads (*see* page 26, lines 11-17).
19. With respect to claim 13 and 27, Armentrout et al. discloses that the incentive is based at least in part upon the workload capability of the distributed devices (*see* page 17, lines 24-29).
20. With respect to claim 28, it further comprises an agent (page 11, lines 6-13) capable of being transferred by the first system to the distributed devices (i.e. software unit, page 11, line 7; *see also* CE 'pop up' window, page 13, line 12), the agent being capable of managing the site testing workload (page 11, lines 8-13).
21. With respect to claim 29, the agent (Fig. 3, CE 84; *see also*, page 11, lines 6-29) is further capable of providing workload related information to the user of the distributed devices (can operate as a browser, *see* page 13, lines 3-24).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout et al.

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24. With respect to claims 6 and 21, Armentrout et al. discloses a network site (Fig. 3, network 29). As discussed for claim 5 above, Armentrout et al. discloses using the internet. However, Armentrout et al. does not specifically disclose an intranet web site. Examiner takes official notice that the network could be either an internet or intranet web site. One of the main differences between the internet and an intranet is that, with an intranet, a private network (intranet) has a gateway between the network and the public internet. Thus, it would have been obvious to one of ordinary skill at the time the invention was made to site test an intranet web site.

25. Claims 2 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout et al. as applied to claims 1 and 17 above, and further in view of Vaid et al. (USP 6,078,953).

26. With respect to claims 2 and 18, Armentrout et al. discloses testing content delivery (checking that the computations are correct, *see* page 19, lines 6-23) from a network site (Fig. 3, network 29). Armentrout et al. does not specifically disclose quality of service testing as the site testing workloads. However, Vaid et al. teaches that quality of service testing is well known (col. 2, lines 5-14; *see also* col. 4, lines 7-55, *see also* col. 10, lines 9-22). Thus, it would have been obvious to a person of ordinary skill at the time of the invention to modify the data checking disclosed in Armentrout et al. with quality of service testing of Vaid et al. to obtain quality of service site testing.

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27. Claims 3, 8, 9, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout et al. as applied to claims 1 and 17 above, and further in view of Harvey et al. (USP 6,052,584).

28. With respect to claim 8, Armentrout et al. discloses testing content delivery (checking that the computations are correct, *see* page 19, lines 6-23) from a network site (Fig. 3, network 29). Armentrout et al. does not disclose the load testing disclosed in claim 8. Harvey et al., however, teaches that load testing is well known (*see* abstract). Moreover, Harvey et al. discloses that a group of distributed devices are scheduled to access the network site at the same time to provide a desired load on the network site (i.e., traffic loading in the cell, *see* Abstract) and at least one other distributed device is scheduled to access the network site to determine a response time for interaction with the network site when it is being loaded by the first group of distributed devices (a mobile unit traverses the cell along a predetermined path and response info is recorded, *see* abstract). Thus, it would have been obvious to a person of ordinary skill at the time of the invention to modify the data checking disclosed in Armentrout et al. with the load testing of Harvey et al. to load the network with distributed devices and use one device to determine response data when interacting with the loaded network.

29. With regard to claim 9, Harvey et al. discloses a wireless network (Fig. 1; *see also* Abstract).

30. With respect to claims 3 and 19, Armentrout et al. discloses testing content delivery (checking that the computations are correct, *see* page 19, lines 6-23) from a network site (Fig. 3, network 29). Armentrout et al. does not specifically disclose load testing as the site testing workloads. However, Harvey et al. teaches that load testing is well known (*see* abstract). Thus, it would have been obvious to a person of ordinary skill at the time of the invention to modify

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the data checking disclosed in Armentrout et al. with the load testing of Harvey et al. to obtain load testing as the network site testing.

31. Claims 4, 16, 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout et al. as applied to claims 1 and 17 above, and further in view of Fox et al. (USP 6,421,781 B1).

32. With respect to claims 4 and 20, Armentrout et al. discloses testing content delivery (checking that the computations are correct, *see* page 19, lines 6-23) from a network site (Fig. 3, network 29). Armentrout et al. does not specifically disclose denial of service testing as the site testing workload. However, Fox et al. teaches that denial of service attacks are well known and is protecting against them (col. 8, lines 10-32). Thus, it would have been obvious to a person of ordinary skill at the time of the invention to modify the data checking disclosed in Armentrout et al. with denial of service attacks of Fox et al. to obtain denial of service network site testing.

33. With respect to claims 16 and 30, Armentrout et al. discloses using personal computers as the service providers (*see* page 1, lines 11-23). Armentrout does not specifically disclose wireless devices. However, Fox et al. discloses the use of small wireless internet devices such as mobile phones and PDAs (*see* col. 1, lines 37-67). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use not only personal computers as a distributed device, but also wireless devices and hand-held devices.

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34. Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armentrout et al. as applied to claims 1 and 17 above, further in view of Applicant's Admitted Prior Art (APA).

35. With respect to claims 11 and 25, Armentrout et al. does not specifically disclose that the incentive is a sweepstakes. Applicant's APA discloses that sweepstakes are well known incentives and further discloses that IWON.COM and other sites have incorporated these sweepstakes into their web portals. Thus, it would have been obvious to one of ordinary skill in the art to substitute sweepstakes as the incentive values.

Conclusion

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Haswell et al. (USP 6,502,102)

Moore et al. (USP 6,480,469)

Gall et al. (USP 6,356,929)

Ellis (6,167,428)

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A Mais whose telephone number is (703) 305-6959. The examiner can normally be reached on 8:00-4:30.


38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (703) 305-4366. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 746-6182 for regular communications and (703) 746-6182 for After Final communications.

39. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

August 8, 2003



WELLINGTON CHIN
SUPERVISORY PATENT EXAMINER
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